

If a user of tangible personal property purchases the tangible personal property at retail from a retailer, but does not pay the Use Tax to such retailer, the purchaser shall pay the Use Tax directly to the Department. See 86 Ill. Adm. 150.130. (This is a GIL.)

September 10, 2004

Dear Xxxxx:

This letter is in response to your fax dated September 6, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I have sent this info previously to the Illinois Dept. of Revenue auditor several times, and thought the problem had gone away. Apparently it has not. The Illinois Dept of Revenue, though they are looking into it again, has basically said that they don't really care about the circumstances, and that the burden of proof is on me. The situation is quite ridiculous, and I have spent many hours dealing with this problem. The burden of proof is not on me, yet the Illinois Dept. of Revenue has refused to provide documentation of any kind. I have turned the matter over to my attorney, though I am sending this letter to you at the suggestion of PERSON at the Illinois Dept. of Revenue.

Following are the circumstances revolving around this controversy. I am forwarding to you what documentation I have.

In February 2000, I took a customer, to the ABC showroom in CITY. We received and signed a contract on 3/7/00 in the amount of \$11,510 as my cost. There was no mention or indication in the contract of importation of product, or of taxes to be paid or otherwise. As you can see, they listed the customer name as NAME. This was the first and last time I did business with ABC. I would later receive at my request, a copy of the same contract from ABC's factory in COUNTRY with other information hand written on the contract that was not there when I signed it. They wrote in 'No taxes of any kind are included in this contract', and placed my social security number on the top. I used to

work with this designer when he was at XYZ's in CITY. The only way that I can think that he could have gotten my SS # is from the files from XYZ's. I had done business with them for several years, and had applied for credit with them.

On 9/26/02, two years after completion of my project, I received the first letter from AUDITOR from the Illinois Dept of Revenue, a bill for taxes and fines for \$25,925 in 'furniture, bedding, mattresses, etc.' delivered on 6/17/00. I mistakenly believed this to be the bedroom set that we had purchased from COMPANY from an Italian furniture company. AUDITOR quickly corrected me on the subject, informing me that it was in fact for the '\$25,925 in cabinets that I had imported from COUNTRY'. I sent him the letter dated 10/2/02 explaining the situation. On 10/28/03, one year later, he sent me a revised bill for a lesser amount, acknowledging that I had indeed not imported \$25,925 in cabinets, but saying that I had in fact imported \$11,100. I sent an additional letter dated 11/2/03 reiterating my points. On 11/5/03 I received yet another letter from AUDITOR. It is at this point, after several frustrating conversations with him - he doesn't like to listen to what you are saying, that I got involved with his supervisor.

Through the course of conversations, I demanded to have copies of any and all documents that they have showing me as said importer. They basically said that they have none. It is simply reported as a liability from the customs clearing agent, and they enforce it. But, they said that I could get these documents from the clearing house directly. When I tried to do this, The customs agents said that they could not provide me with anything because they showed no record of my name or social security number anywhere. At that point, SUPERVISOR said that she would look into it and get back to me. I did not hear from them again until the latest letter of 8/29/04.

I called and spoke with a PERSON at the Illinois Dept. of Revenue regarding the latest letter. A curious fact came out in the conversation. It appears that the Illinois Dept. of Revenue in 11/03 applied for a business resale tax ID number on my behalf in the business name of BUSINESS so that they could apply the liability to me directly. I thought the days of BIG Brother were over.

ABC committed fraud. It is my understanding that they are no longer in business in Illinois. They tried to push their tax burden off on me for 25K in cabinets when my company purchased on the behalf of NAME 11 K. I do not do resale of any kind, ever. I am a general contractor. I build and remodel homes. I had a fixed contract price with an Illinois retailer. I did not even know at the time that their production facility was in COUNTRY. I certainly did not authorize the importation of anything. The Illinois Dept. of Revenue has provided zero documentation. If they insist upon a hearing I will go to one, but I will not pay this liability. It is not mine! I would like to get this fixed quickly. The interest that the Illinois Dept. of Revenue charges is worse than that a loan shark. I can be contacted on my cell phone.

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchase occurs in

Illinois, the purchaser must pay the Use Tax to the retailer at the time of purchase. The retailer is then allowed to retain the amount of Use Tax paid to reimburse itself for its Retailers' Occupation Tax liability incurred on the sale. However, the retailer's failure to collect the tax from the purchaser does not prevent the Department from collecting the tax directly from the purchaser. If the user purchases the tangible personal property at retail from a retailer, but does not pay the Use Tax to such retailer, the purchaser shall pay the Use Tax directly to the Department. See 86 Ill. Adm. Code 150.130, enclosed. Or, if the purchase occurs outside Illinois from a retailer who does not collect Illinois Use Tax from its purchaser, the Illinois purchaser must self-assess his or her Use Tax liability and remit it directly to the Department.

It is difficult to determine the precise nature of the transactions at issue from the limited information you provided. However, persons who act as construction contractors incur Use Tax on their cost price of tangible personal property that is incorporated into real estate. As indicated above, if tax is not paid to a retailer, the construction contractor must self-assess and remit tax in accordance with the provisions of the Use Tax Act. (See 86 Ill. Adm. Code 130.1940(c), enclosed)

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

Samuel J. Moore
Associate Counsel

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